

**Lawrence Moser t/a Excel Builders and Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 4-CA-21475**

October 29, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the Union, on February 25, 1993, the General Counsel of the National Labor Relations Board issued a complaint on May 27, 1993, against Lawrence Moser t/a Excel Builders, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 30, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 4, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 2, 1993, notified the Respondent that unless an answer was received by September 16, 1993, a Motion for Summary Judgment would be filed.<sup>1</sup>

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> Although copies of the complaint and the September 2, 1993 letter which were sent to the Respondent by certified mail were returned marked "Unclaimed" or "Moved, Left No Address," the Respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986); and *Mondie Forge Co.*, 309 NLRB No. 82 (Nov. 25, 1992).

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a sole proprietor engaged in the construction industry as a carpentry contractor, with its principal place of business located at 321 Cattell Avenue, Collingswood, New Jersey. During the year preceding issuance of the complaint, the Respondent, in conducting its business operations purchased and received at its Collingswood facility materials and supplies valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

Since in or about the first or second week of October 1992, the Respondent and the Union have been parties to a collective-bargaining agreement (the Agreement), effective by its terms from May 1, 1991, to April 30, 1994, pursuant to which the Respondent has recognized the Union as the exclusive representative of the Respondent's employees in a unit (the unit) referred to in articles 2 and 10 of the Agreement.

At all material times, since on or about the first or second week of October 1992, based on Sections 8(f) and 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit, which unit has been appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

From in or about late fall until early 1993, the Respondent has failed to apply the terms and conditions of the Agreement to its employees employed at a job-site located at Church Road and Washington Lane, Wyncote, Pennsylvania (the Hopkins House job).

Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

On or about January 27, 1993, the Union, by letter, requested the Respondent to "make [its] books available for inspection by an auditor of the MDC . . . ."

The access to information requested by the Union, is necessary for, and relevant to, the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit.

Since in or about January 27, 1993, the Respondent has failed and refused to furnish the Union with access to the information requested by it as described above.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing, from in or about late fall to early 1993, to apply the terms of the 1991-1994 Agreement to its employees employed at the Hopkins House job, we shall order the Respondent to apply the Agreement to employees employed at that job and to make employees whole for any loss of earnings or benefits they may have suffered as a result of its failure to do so as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), and *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent further violated Section 8(a)(5) and (1) by failing to provide the Union with access to the necessary and relevant information it requested on January 27, 1993, we shall order the Respondent to make its books available for inspection by an auditor of the MDC.

## ORDER

The National Labor Relations Board orders that the Respondent, Lawrence Moser t/a Excel Builders, Collingswood, New Jersey, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing to apply the terms and conditions of the 1991-1994 Agreement to its employees employed at the Hopkins House job.

(b) Failing and refusing to furnish Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO with access to information which is necessary and relevant to the performance of its functions as the limited exclusive representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Apply the terms and conditions of the 1991-1994 Agreement to its employees employed at the Hopkins House job and make the employees whole for its failure to do so as set forth in the remedy section of this decision.

(b) Furnish the Union with access to the information it requested on January 27, 1993, by making its books available for inspection by an auditor of the MDC.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Collingswood, New Jersey, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to apply the terms and conditions of our May 1, 1991, through April 30, 1994 collective-bargaining agreement with Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO to our employees employed at the Hopkins House job located at Church Road and Washington Lane, Wyncote, Pennsylvania.

WE WILL NOT fail and refuse to furnish the Union with access to information which is necessary and rel-

evant to the performance of its functions as the limited exclusive representative of employees in the unit referred to in articles 2 and 10 of the Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL apply the terms and conditions of the 1991-1994 Agreement to our employees employed at the Hopkins House job located at Church Road and Washington Lane, Wyncote, Pennsylvania, and WE WILL make employees whole for any losses of wages and benefits suffered as a result of our failure to do so.

WE WILL furnish the Union with access to the information it requested on January 27, 1993, by making our books available for inspection by an auditor of the MDC.

LAWRENCE MOSER T/A EXCEL BUILDERS